

STATE OF NORTH CAROLINA  
COUNTY OF GRANVILLE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
07-EDC-1605

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*Student* by Surrogate Parent, *Parent*, )  
)  
Petitioners, )  
)  
v. )  
)  
GRANVILLE COUNTY BOARD OF )  
EDUCATION, )  
)  
Respondent )  
)

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**FINAL DECISION**

This contested case was heard before Chief Administrative Law Judge Julian Mann III, on November 8, 9, and 13, 2007. The first two days of hearing were held in the Granville County Office Building, County Commissioners' room, Oxford, North Carolina. The last day of hearing was held, by agreement, at the Office of Administrative Hearings in Raleigh, North Carolina. This contested case was made open to the public pursuant to Petitioner's request made pursuant to N.C. Gen. Stat. §115C-109.6(e). The record was closed with the receipt of the transcript in the Office of Administrative Hearings on November 20, 2006.

**APPEARANCES**

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### **WITNESSES:**

**For Petitioner:** Michael Locicero  
*Parent*  
L.S.  
Dr. Kevin West

**For Respondent:** Dr. L.  
W.P.  
Ms. V.C.  
Mr. J.K.  
M.W.  
*Ms. Parent*

### **PRELIMINARY STATEMENT**

Petitioner (Student) (hereinafter "Student") is a 14-year-old 9<sup>th</sup>-grade student in the Granville County Public Schools. He remains in the custody of the New Jersey Division of Youth and Family Services (DYFS). He originally lived with his mother and siblings in New Jersey. In January of 2002, his father was incarcerated with no contact with his father since. Subsequently, he was removed from his mother's custody and placed in a series of shelters. In July 2007 he was relocated from New Jersey and placed with his aunt, *Parent*. He enrolled as a 9<sup>th</sup> grader in J.W. High School on or about August 29, 2007.

Student's most recent IEP, dated March 20, 2007, from New Jersey, identified him as Multiply Handicapped and in need of behavioral interventions. Respondent accepted Student as a student entitled to special education services, with a disability classification of Behaviorally and Emotionally Disabled ("BED").

On September 12, 2007, a teacher saw that Student had brought a straight razor to school. He was suspended for 10 days and recommended for a 365-day suspension (later modified to a recommendation for a long-term suspension). A manifestation determination review meeting was held on September 19, 2007. The IEP team determined that the misconduct was not a manifestation of his disability. The long-term suspension was upheld and Student was offered enrollment in the PASS Program at the Alternative Learning Program for Students ("ALPS") for the remainder of the 2007-08 school year.

Petitioners filed a Petition for Contested Case Hearing challenging the manifestation determination decision, and alleging that assignment in the alternative program (beyond the 45-day period authorized for bringing weapons on the school grounds) constituted a change of placement which denied the Petitioner a free appropriate public education (FAPE).

## **STIPULATIONS**

In a prehearing telephone conference on October 31, 2007, and presided over by Administrative Law Judge Augustus Elkins, II, the parties stipulated to the following:

1. The sole issue to be heard in this expedited hearing was Petitioner's dispute related to Respondent's manifestation determination review.
2. Any document which was a part of Petitioner's educational records was authentic.
3. The employees of the Respondent school system would appear at the hearing without being subpoenaed.
4. At the hearing, the parties stipulated to the admission of a September 20, 2007, letter to *Parent* from *Dr. F.* of the Granville County Schools. (Ex. P-26).
5. At the hearing, the parties also stipulated to the admission of an incident report authored by Corporal Whitfield for an incident on September 12, 2007. (Ex. P-27).

**Based upon the stipulations of record and by the preponderance of the admissible evidence, the undersigned makes the following:**

## **FINDINGS OF FACT**

### **I. FINDINGS FROM DOCUMENTARY EVIDENCE**

1. Student (Student) was an 8-year-old third-grader in the Jersey City Public Schools in the 2001-02 school year. He was referred to the school's Child Study Team due to academic and behavioral difficulties. (Ex. R-1).
2. In the 2001-02 school year Student was suspended twice for "fighting in the lunchroom with peers." (Ex. R-1).
3. School Psychologist D.M., MA, PD of the Jersey City Public Schools prepared a Psychological Assessment Report, dated June 10, 2002. (Ex. R-1). The Summary is found as a fact as to Student's psychological assessment as of five years ago:

#### **Summary:**

Student is a 8 year 11 months third grade student who was referred to the Child Study Team due to behavioral and academic difficulties. Student has exhibited aggressive outbursts and has demonstrated difficulty controlling his anger. Psychological testing using the WISC-III yielded a Verbal score of 100 which is

in the Average range and a Performance score of 83 which is in the Low Average range. Student's Full Scale score of 92 is in the Average range. There is a significant discrepancy of 17 points between the Verbal and Performance domains suggesting that Student's verbal skills are more well-developed than his nonverbal reasoning skills. Bender Visual Motor Gestalt score of 106 is in the average range. Social/emotional assessment reveals a guarded but friendly young boy who struggles with feelings of inadequacy and inferiority. He appears hypersensitive of criticism and any assault or perceived assault to his fragile self-esteem is countered with intense anger and hostility. While he has exhibited some insight into his behavior, he has not been successful in consistently restraining his anger to avoid aggressive confrontations. Projective material suggests that Student may tend to view the world as a rejecting and dangerous place. Although he responds well to positive individual attention and seems to desire nurturance, he is cautious and may have difficulty trusting others. As a result, Student may feel isolated yet have difficulty relating positively to others.

Student is a youngster of what appears to be average intellectual ability who is significantly hindered by behavioral and emotional issues. Educational recommendations will be forthcoming once all the members of the Child Study Team have concluded and discussed their findings.

4. K.I., LDTC, of the Jersey City Public Schools prepared an Educational Assessment Report, dated June 11, 2002. A portion of the Summary is quoted below to reflect Student's Educational Assessment five years ago:

Student was referred to the CST due to behavioral and academic difficulties. Review of records indicate he has transferred numerous times among three different schools in Jersey City. Grades have fluctuated. Habits and attitude were in need of improvement. Student has not been retained. According to his teacher, Student is an uncooperative student who appears tense and angry. Self-concept is said to be poor. He does not maintain eye contact. Student is usually impulsive, aggressive, and a behavior problem and disruptive to class routine. Student has a low frustration threshold and becomes easily upset if all does not go his way. Student threatens others, is violent at times, and always wants to fight. He has temper tantrums and has been suspended. Student does not relate well with peers, and is disrespectful to adults.

5. The 2002 Educational Assessment Report noted that Student was angry during the testing, because his teacher had taken a possession away from him (Ex. R-2):

Student did not willingly accompany this examiner. He was angry because his teacher had taken a possession away from him. Student had a very angry face and would not speak at first. However, with cajoling from the examiner, he opened up a bit and explained he had a

problem with 'anger management. ... Student said he gets mad when people talk about his mother, and he attends anger management counseling at the Jersey City Medical Center.

6. The 2002 Educational Assessment Report reports that Student acted appropriately during his structured 20-minute observation: "Student sat quietly at his desk, every once in a while looked around, and occasionally worked on his assignment. Student did not interact with his peers or seek assistance from the teacher." (Ex. R-2).

7. The Jersey City Public Schools prepared a Social Assessment Report dated June 21, 2002. (Ex. R-3).

8. J.J., MSW, SSW, prepared the 2002 Social Assessment Report. (Resp. Exh. 3) The Summary is quoted below to reflect Student's Social Assessment as of five years ago:

Summary:

Student was referred to the child study team from the Pac committee because of academic and behavioral difficulties. School records reveal that student has not been retained. He is a third grade student. Student's vision and hearing is normal.

Student was observed Tuesday, June 18, 2002 from 10:45 am. to 11:05 am in a third grade class in PS#20. Student was not working on his assignment. He was playing with his books and making noises. Often he had to be redirected by the teacher, and when he was he would get visibly upset. The teacher indicated that Student will often disrupt the class. He will play around with things on his desk and has a tough time staying focused unless someone is really paying attention to him. He does not respect authority and will also get into fights with other students. In an interview with Student he said he knows that he has a problem controlling his anger and that he is going to counseling to try to get it under control.

MK is the mother of Student. She was born in Jersey City and is now 32 years old. She reports that she is currently working in Child day care. Her highest level of education was the 11<sup>th</sup> grade and she reports that her health is fine. EC is the father of Student and is 32 years old. He was born in Jersey City and his highest level of education is a GED. He is currently incarcerated and has not had any contact with Student in the past year.

MK had Student when she was 26 years old. He was the third child of MK. Student lives in a two-bedroom apartment in which they rent with his brothers, and his mom. She reports that Student for the most part gets along well with his brothers and sisters at home. However, sometimes he can display a bit of an attitude. It seems that he gets along more with his younger brother more than his

older brother because he tends to have trouble with authority. EC, Student's father, is currently incarcerated and has not had any contact with Student in the past year.

Results of the Achenbach Child Behavior Checklist reveal that he is having clinically significant trouble in Internalizing Problems with a t score of 63, Externalizing Problems with a t score of 75, and total problems with a t score of 70.

Results of the Achenbach Teacher Report form indicate that Student is having clinically significant trouble in Internalizing Problems with a t score of 73, Externalizing problems with a t score of 83, and in total problems with a t score of 81.

9. In 2004, as an 11-year old, Student was referred by the Jersey City Public Schools for a psychiatric evaluation because of "severe behavioral problems." A psychiatric report was prepared by Dr. Alvaro Gutierrez, MD, General and Child Psychiatry, Elizabeth, N.J., dated November 29, 2004. (Ex. P-21). Dr. Gutierrez' Summary Diagnosis and Recommendations are quoted below to reflect Student's Psychiatric Evaluation as of this year:

#### **SUMMARY**

Student is an eleven year-old African-American male who is oppositional. He seems to be very angry. He does not show respect. He is disruptive. He is defiant and aggressive.

#### **DIAGNOSIS:**

AXIS I: Oppositional Defiant Disorder  
AXIS II: None  
AXIS III: None  
AXIS IV: Psychosocial Stressor: Moderate. Problems with primary support group  
AXIS V: Current GAF: 55

#### **RECOMMENDATIONS:**

1. Student should be referred to a community mental health clinic for psychotherapy and possible medication.
2. An educational placement as per Child Study Team evaluation.

10. K.H. of the Newark Public Schools prepared an Educational Assessment Report dated December 13, 2006. (Ex. R-4). The "Educational Background Information from this report is quoted below:

### **EDUCATIONAL BACKGROUND INFORMATION:**

Student is currently an 8<sup>th</sup> grade student at M Elementary. He transferred to M in November 2006 from R Elementary School where he began the 2006-2007 school year. Prior to this school year Student was a resident of Jersey City, and attended the Jersey City Public Schools. Student's educational history is not complete at this time due to the fact that not all of his academic records have been forwarded to M School. Student received a full batch of Child Study team evaluations in 2002. Those evaluations reveal that he was referred by the PAC committee in his school due to academic and behavioral difficulties. His psychological evaluation found that Student was in average intellectual ability but was significantly impacted by emotional and behavioral issues. The educational evaluation was conducted when Student was in 3<sup>rd</sup> grade and revealed that he was functioning slightly below grade level across all major subject areas. The evaluator reported that Student's poor school performance was due in part to his limited effort, short attention span, and high distractibility. The social assessment also completed in that school year found Student to have clinically significant trouble in internalizing and externalizing problems. The evaluator attributed those difficulties to Student's poor academic and behavioral performance in school. Results of a psychiatric evaluation yielded a diagnosis of oppositional defiant disorder, and a psychosocial stressor. He was recommended for psychotherapy and possible medication at a community mental health clinic. There is no evidence as to whether these recommendations were followed. Student's current teacher has found that Student is capable of performing on a higher level. However Student is not motivated and is distracted by conflicts occurring in the classroom daily. Student received mostly D's in his first cycle grades, but his teacher is confident that these grades could improve with greater effort and interest in studies.

11. The 2006 Educational Assessment Report noted that Student was classified as "Multiply Disabled." (Ex. R-4).

12. The 2006 Educational Assessment Report noted that Student "is capable of performing on a higher level. However Student is not motivated and is distracted by conflicts occurring in the classroom daily." (Ex. R-4).

13. The 2006 Educational Assessment Report noted that Student's behavior was appropriate during testing (Ex. R-4):

"He demonstrated strong self control and a strong ability to attend as there were many distractions in the classroom. When the teacher briefly conferred with Student about his progress, his response appeared to be appropriate. During this observation Student appeared to be functioning both academically and behaviorally."

14. The 2006 Educational Assessment Report notes that Student "does not like school and finds it boring." (Ex. R-4).

15. The 2006 Educational Assessment Report emphasized that Student “has a low level of motivation and limited interest in school. This is probably the most significant factor impacting his ability to make progress or participate in the general education setting.” (Ex. R-4).

16. V.B., APRN, BC performed a Psychiatric Evaluation on January 12, 2007, as part of Student’s admission into the Grace Hall I program for residential placement and treatment services in New Jersey. (Ex. P-20). The Diagnostic Impression and Recommendations are quoted below to reflect Student’s Psychiatric Evaluation over one year ago:

DIAGNOSTIC IMPRESSION: DSM-IV-TR

AXIS I:

- 1) Mood Disorder, NOS
- 2) Conduct Disorder

AXIS II:

- 1) Deferred

AXIS III:

None

AXIS IV:

Acute Stressors:

Separation from other, siblings and family  
Transition to residential setting  
Recent DYFS involvement  
Lack of social support

Moderate Chronic Stressors:

Separation from biological father  
Behavioral problems in multiple situations  
Past criminal legal situation  
Placement in special education at school



AXIS V:      (GAF) CURRENT: 40    HIGHEST IN PAST YEAR: Unknown

RECOMMENDATIONS:

1.      Participation in the Grace Hall I therapeutic, academic, and recreational components of the program.
2.      Institute behavior modification intervention which in part can also be utilized in the home setting.
3.      Monitor clinical status to optimize positive response to medications with a minimal amount of negative side-effects, if medications are prescribed.
4.      Individual counseling sessions to improve verbalization of emotions, anger, feeling of separation, and to improve interpersonal skills.
5.      Group sessions and activities to improve socialization and increase conflict resolution skills.
6.      Family counseling sessions when appropriate.
7.      Monthly Treatment Planning Conferences to include program Treatment Team members, CMO workers, and any other pertinent agency representatives deemed appropriate to establish goals, monitor progress and establish disposition plans.
17.    In spring 2007, the Newark Public Schools reevaluated Student and determined him to be eligible for modified special education and related services. The determination was based on "Classroom performance, teacher reports, standardized test results, (and) most recent CST evaluations." Student was identified with the disability of "emotionally disturbed," as indicated by "inappropriate behavior and feelings that interfere with the educational performance of the student." (Ex. R-5).
18.    The Newark Public Schools developed an individualized education program (IEP) for student, dated March 20, 2007. ( Ex. P-25).
19.    In the March 2007 IEP, Student's disabling condition was identified as "Multiply Disabled." (Ex. P-25).
20.    The March 2007 IEP recommended placing Student in the program entitled "Behavioral Disabilities" from February through June 2007, then to be placed in the "Resource Replacement Program" commencing September 2007. As a related service, Student was to receive counseling one time weekly for 30 minutes. (Ex. P-25).

21. Under the heading: "Describe the present level of academic achievement and functional performance including how the child's disability affect his or her involvement and progress in the general education curriculum, the March 2007 IEP recites:

For preschool children, as appropriate, describe how the disability affects the child's participation in appropriate activities. [N.J.A.C. 6A:14-3.7(d)1] as amended by IDEA 2004]. Student is currently an 8<sup>th</sup> grader at M. (School). He is placed in a Behavioral Disabilities program with Counseling as a related services. Student was administered an educational evaluation as part of his reevaluation. In the area of reading Student is functioning on a 5.4 grade level. On the test he showed little to no phonetic decoding strategies. He relies on a limited sight word vocabulary which hinders his potential for reading higher level texts. In writing he is on a 3.0 grade level. He demonstrated poor mechanical and grammatical foundations. In addition he was unable to make appropriate corrections when presented with errors. This indicates that Student will probably struggle with editing and revision tasks which are significant components in the writing process. In mathematics Student is on a 4.9 grade level. Mathematically Student demonstrated great difficulty with application of concepts. Although he is computationally strong, he is not able to transfer those skills to other types of mathematical problems.

Student's teacher reports that Student comes to school consistently. He expresses himself well, participates in class discussions, and asks for help with academics when necessary. He follows directions as they pertain to his class work. He consistently completes class work and homework assignments. Overall, Student's area of weakness is his low motivation, inconsistent performance, and his lack of focus on school. Socially and behaviorally Student continues to struggle. He has strong peer relations, and gets along with the majority of his peers. However, he has a low frustration level, lack of impulse control, and can be immature. This can lead to aggressive, defiant, argumentative, and disruptive behaviors at times. Student has been involved in several altercations with classmates and students in his class. He usually does not express any remorse for these behaviors, due to the fact that he feels justified in his actions.

Based on the fact that Student continues to have significant behavioral concerns, and struggles academically across all subject areas, the IEP team has determined that Student should remain eligible for special education and related services. The team feels that Student's needs will be most adequately met in a Resource Replacement Program with academic support for reading, writing and mathematics daily. Student's social and behavioral needs shall be met in his Behavior Intervention Plan, and through weekly counseling.

22. Student articulated that he would like to pursue a career in engineering and play football on a high school team. ( Ex. P-25)

23. The March 2007 IEP sets forth behavioral interventions that focus on Student's anger and his disruptive and aggressive interactions with other students (Ex. P-25):

- "Target behavior: Reduce picking on others, teasing, arguing, manipulating and fighting."
- "Student has been suspended for fighting which did not affect student's attitude or actions."
- "Incident reports should be filed for all aggressive, threatening or physical behaviors."
- "Guardian should seek ongoing out of school therapy to address anger."

24. The March 2007 IEP provides for counseling services designed to address Student's anger management (Ex. P-25):

- "Identify factors in school and at home that are contributing to feelings of anger and distress"
- "Provide strategies for students to handle feelings of anger and frustration"

25. *Parent* enrolled Student at W High School in the Granville County Schools on or about August 29, 2007. *Parent* indicated that student had a previous IEP in Jersey City. (Ex. R-8)

26. On September 7, 2007, Student was given 3 days lunch detention for playing an iPod during class (designated a "minor" offense) and for disrespect and refusal to give the iPod to the teacher and principal (designated a "major" offense). (Ex. R-11). Student was disciplined by a "3 days lunch detention in SHLS office Monday, September 10 – Wednesday, September 12<sup>th</sup>."

27. On September 12, 2007, Student brought a razor with a 2-½ inch blade to school. Teacher M.W.'s statement (Ex. P-27) describes the incident as follows:

"At approximately 8:30 a.m., I, M.W., witnessed Student, handling a closed straight razor as I walked past him in English class. Quietly, I whispered, 'Is that a razor?' and stuck my hand out to take it. With my back to the other students, Student placed it in my hand, and I put it in my pocket."

28. Student was taken to the office of the principal, Dr. L.. In the principal's office, Student told *Dr. L.*, M.W. and the school resource officer, Cpl. Whitfield, that he had brought the razor to school every day. (Ex. R-21; P-27, p. 6).

29. In the principal's office, Student put on his cap. Mrs. Wilkie's statement describes what happened next (Ex. P-27, p. 10):

"Wearing caps inside is against school rules, so *Dr. L.* calmly asked him to remove it. He didn't, and she asked the student if he was refusing to remove the cap. He shook his head 'yes' and left the cap on."

30. Next, Student began cracking his knuckles and putting his hands in his pocket. The school resource officer, Cpl. Whitfield, told Student to stop, and Student refused, asking "why?" Cpl. Whitfield told the Student again to stop or he would be handcuffed. The Student became defensive, cursing, talking back and continued to ask "why." Cpl. Whitfield then handcuffed Student. (Ex. P-27).

31. When Student's aunt *Parent* arrived at the school, she was irate to find the Student in handcuffs, and there was a confrontational scene. (Ex. P-27).

32. For bringing the razor to school, *Dr. L.* suspended the Student 10 days and recommended long-term suspension. (Ex. R-14; R-22). A manifestation determination meeting was scheduled for September 19, 2007.

33. On September 13, 2007, *Parent* received an Invitation to Conference form, scheduling the September 19, 2007 meeting and stating that one of the purposes would be a manifestation determination. (Ex. R-23).

34. On the Invitation to Conference form signed by *Parent*, *Parent* acknowledged receipt of a Handbook of Parents' Rights. (Ex. R-23).

35. A manifestation determination meeting was held on September 19, 2007. Present were *Parent*, Student's aunt; Student; L.S., a social worker with Granville County DSS who accompanied Student and *Parent*; Dr. L., school principal and LEA representative; M.W., special educational teacher; and V.G., regular education teacher. (Ex. P-11).

36. The IEP team discussed that when asked, Student put the razor "gently" in M.W.'s hand. (Ex. P-11).

37. The IEP team discussed that Student had no record of a prior weapons violation. (Ex. P-12 and P-11).

38. The IEP team concluded that: "Student's behavior is not a manifestation of his disability. Suspension sustained and services will be provided." (Ex. P-13).

39. The IEP team determined that the conduct in question did not have a direct or substantial relationship with the Student's disability. (Ex. P-11).
40. The IEP team determined that the conduct in question was not a direct result of failure by the school district to implement the IEP. (Ex. P-11).
41. The IEP team determined that the behavior was not defiant. (Ex. P-12) "Defiant behavior only occurs after Student has been reprimanded."
42. The IEP team made a team hypothesis that in light of being reprimanded, Student will make poor choices and become defiant. (Ex. P-12).
43. Everyone present at the IEP meeting agreed with the manifestation decision, or at least did not voice any disagreement. (Ex. P-12).
44. *Parent* and the social worker, L.S., signed several documents on September 29, 2007, which stated that the IEP team had determined that Student's behavior was not a manifestation of his disability. (Ex. P-15; P-13; P-11).
45. Following the determination of no manifestation, the Superintendent, Dr. Timothy Farley, notified *Parent* that he was upholding the long-term suspension but was offering Student enrollment in the PASS Program at ALPS for the remainder of the 2007-08 school year. (Ex. P-26).
46. At the time of the September 19, 2007 manifestation determination review meeting, Respondent had not received all the special education records from Student's previous school in Newark, New Jersey. See Ex. P-11: "Exceptional children information is continuing to be received."
47. V.C. (school psychologist), W.P. (behavior specialist) and M.W. (special education teacher), made numerous attempts to obtain educational records from the Newark Public Schools and the New Jersey case worker, Michael Locicero. (Ex. R-9; R-10; R-27; R-28; R-32).
48. At the September 19, 2007, IEP meeting, the IEP team conducted a functional behavioral assessment. (Ex. P-14).
49. The functional behavioral assessment described the targeted problem behavior as follows: "Student will make better decisions/choices with regard to knowledge of consequences, especially after being reprimanded or confronted with a violation." The targeted problem behavior was identified as having occurred twice during the 2007-08 school year, and had existed since third grade. (Ex. P-14).
50. The functional behavior assessment plan identified the apparent trigger or antecedent of the targeted behavior as: "When confronted with a rule violation or request

for personal items, Student has become defiant thus making inappropriate choice with or without knowledge or consequence.” (Ex. P-14).

51. The IEP team hypothesis was that “when confronted with a rule violation or request for personal items, Student has become defiant thus making inappropriate choice with or without knowledge of consequences.” (Ex. P-14).

52. The problem area targeted for intervention by the IEP team was: “disrespectful remarks, anger, defiance.” (Ex. P-14).

## **II. FINDINGS FROM TESTIMONY**

1. Student is a resident of Oxford, Granville County, North Carolina where he lives with his aunt, *Parent*, who is authorized to make educational decisions for him. (Resp. Exh. 7). Student was placed at her home by his legal guardian, the New Jersey Division of Youth and Family Services (“DYFS”), on July 19, 2007.

2. Student was removed from his mother’s custody in October, 2005. In the following months, Student lived in several placements in New Jersey. (T. v. 1 pp. 169-173) Student’s behavior in all of these placements was difficult to manage; according to his legal guardian, DFYS social worker M.L., Student exhibited behavior that was defiant, non-compliant, disrespectful, explosive, hard to manage, impulsive, and unpredictable. (T. pp 171-172) When Student was removed from a youth shelter for unmanageable behavior and subsequently placed at Youth Consultation Service (“YCS”), he was administered a psychiatric evaluation on January 12, 2007. (T. v. 1 p. 173; Pet. Exh. 20)

3. Student came to live with his aunt, *Parent*, on July 19, 2007. Student’s brother also resides with his aunt in her residence. *Parent* also has children of her own who reside with her. (Tr. Vol. 1, p.214)

4. *Parent* is a charge injury specialist with \*\* Medical Center in \*\*, North Carolina and handles all of the facility’s insurance and billing charges. (Tr. Vol. 1, p. 213.)

5. Student’s aunt enrolled him on the second day of school. (Tr. Vol. 1, p. 235; Vol. 2, p. 106.) Upon enrollment, through an oversight, Student’s guardian failed to note Student’s behavior issues in the area designated for such on the enrollment forms. (Tr. Vol. 1, pp. 232-233.)

6. Upon Student’s enrollment, the Granville County Schools, in accordance with its standard procedures, promptly and diligently attempted to obtain records from Student’s prior school system and provided the proper releases with their requests. (Tr. Vol. 1, pp. 20-21; Vol. 2, pp. 80-88, 99, 104, 108-110, 172, 184, 240-242.)

7. Some special education records were provided to the school by Student on September 5, 2007, including several evaluations dating back to 2002, one 2006 Educational Assessment and a partial IEP. (Tr. Vol. 1, pp. 50, 136; Vol. 2, pp. 110-112, 117, 168-170, 200.) On that day, a copy of the documents was presented to Student's aunt, H.H. (Tr. Vol. 3, pp. 2-3.)
8. Immediately upon receipt of the New Jersey records, Student's schedule was changed to reflect the classroom environment on his IEP. (Tr. Vol. 2, pp. 117-118, 170-171.) The school counselor met with Student to discuss this change. (Tr. Vol. 2, p. 112.) Student worked on his IEP reading goals in an inclusion English class. (Tr. Vol. 2, pp. 168-171.)
9. On September 7, 2007, Student was referred to *Dr. L.*, the school principal, for listening to his iPod in class and refusing to give the iPod to the classroom teacher when requested. When *Dr. L.* asked Student for the iPod, Student refused to give it to her. Instead of suspension, *Dr. L.* assigned Student to three days lunch detention in her office. (Tr. Vol. 1, pp. 22-27.) The school counselor conferenced with *Dr. L.*, Student and Student's guardian about this incident for at least an hour. (Tr. Vol. 2, p. 112-113.) *Dr. L.* testified that in her opinion this defiant conduct may have been a manifestation of Student's disability. (Tr. Vol. 1, pp. 69-70, 76.)
10. One and one-half school days later, on September 12, 2007, Student had a straight razor in English class. The special education teacher from the class, M.W., asked Student if the object he was holding was a razor and the teacher put her hand out. Student was not defiant in any way during this incident. (Tr. Vol. 1, p. 32; Vol. 2, pp. 174-176.) Student gently put the razor in the teacher's hand.
11. The razor incident occurred three and one-half school days after Respondent received the partial New Jersey records on September 5, 2007. (Tr. Vol. 1, p. 50.)
12. After handing over the razor, Student was accompanied to *Dr. L.*'s office by the School Resource Officer and another school employee. Student indicated at that time that he had brought the razor every day that he had been in school. (Tr. Vol. 1, p. 47.) Student admitted knowing it was wrong to bring the razor to school. (Tr. Vol. 1, pp. 136-137.)
13. While Student was in *Dr. L.*'s office for bringing the razor, *Dr. L.* told him to remove his hat and he refused. (Tr. Vol. 1, pp. 42, 47; Vol. 2, pp. 209-210.) The refusal to remove his hat in opposition to *Dr. L.*'s directive may have been a manifestation of Student's disability in the opinion of *Dr. L.* and other of Respondent's witnesses. (Tr. Vol. 1, pp. 35, 69-70, 76; Vol. 2, pp. 209-211.)
14. Student refused to surrender his iPod and remove his hat when directed. The Student did not refuse to surrender the razor when requested. (Tr. Vol. 1, pp. 49, 129.)

15. Student's special education teacher was M.W.. At the time of the September 12, 2007 incident, M.W. had reviewed all of the records provided to her the week before. (Tr. Vol. 2, p. 201.) She was physically present during the razor incident and *Dr. L.*'s discussions with Student after the incident. She had drafted temporary location forms for review with Student's guardian before the September 12, 2007 incident. (Tr. Vol. 2, pp. 171, 176-177.)

16. Invitations were sent to Student's guardian and Student on September 13, 2007 for an IEP meeting on September 19, 2007. The purpose of the IEP meeting was to discuss temporary location for services and conduct a manifestation determination review. A Handbook on Parents' Rights was sent with the invitation to Student's guardian. (Tr. Vol. 2, pp. 181-183, 187.) Student's guardian *Parent* had prior experience with the IEP process, as her daughter had an IEP. (Tr. Vol. 1, p. 236.)

17. An IEP meeting was held on September 19, 2007. Petitioner's witness, L.S., testified that the meeting lasted two hours. (Tr. Vol. 1, p. 24.) In attendance at the meeting were Student, Student's guardian *Parent*, L.S. from the Granville County Department of Social Services, *Dr. L.* (Principal), Corporal Whitfield (SRO), V.G. (regular education teacher), and M.W. (special education teacher for the student and chair of the meeting). Ms. L.S., the social worker, was present at the meeting on behalf of Student and his guardian. (Tr. Vol. 1, p. 52.) She first met Student the day of the IEP meeting. (Tr. Vol. 2, p. 3.)

18. The IEP team discussed the provision of services for Student pending receipt of additional records from New Jersey. After discussing Student's New Jersey IEP, the IEP team agreed on comparable services. Student's guardian *Parent* signed the temporary location form without expressing any concerns about the comparable services. (Tr. Vol. 1, p. 53; Vol. 2, p. 184.)

19. The majority of the time spent in the September 19, 2007 IEP meeting was focused on the manifestation determination. The purpose and impact of a manifestation determination was explained. (Tr. Vol. 2, pp. 16-17, 185-187.) It was explained that Student would have more protections if his conduct was determined to be a manifestation of his disability. It was also explained that Student would receive special education services regardless of the manifestation determination. (Tr. Vol. 2, pp. 186-187, 193.) Petitioner's witness, L.S., testified that no one at the meeting, including Student's guardian, indicated at the meeting that they did not understand what was happening. (Tr. Vol. 2, p. 22.)

20. The manifestation determination review conducted on September 19, 2007, was guided by the Manifestation Determination Form (Ex. P-11). (Tr. Vol. 2, pp. 187-188.) The team considered Student's disability, the specifics of the razor incident, and the information available about Student. The team discussed and considered Student's defiant behavior and the fact that it only occurred after Student was reprimanded. (Tr. Vol. 2, pp. 13-14, 28-29, 223-224.) The team noted that Student had



no prior weapons violations, that nothing in his file established a substantial relationship between weapons possession and Student's disability, Student brought the weapon every day, and that there was nothing in Student's New Jersey IEP which, if implemented, would have addressed the conduct. The team considered input from Student's guardian. (Tr. Vol. 1, pp. 54-57; Vol. 2, pp. 13-14, 23, 28-29, 185-193.) Student's complete file at the time, including his New Jersey IEP and all the evaluations that had been provided to Respondent, was available at the manifestation determination meeting. (Tr. Vol. 2, p. 215.)

21. The team determined that Student's conduct was not a manifestation of his disability. (Tr. Vol. 1, pp. 57, 232-233; Vol. 2, pp. 6, 192-193.) The special education teacher who chaired the meeting asked if everyone on the team was in agreement with the decision and no one indicated disagreement. (Tr. Vol. 1, pp. 57, 236; Vol. 2, pp. 18, 193.) The Manifestation Determination Form (Ex. P-11), which sets out the impact of the decision and notes that it is a final decision, was signed by all the IEP team members. *Parent* did not object because she did not want Student "put out of school." (Tr. Vol. 1, pp. 232-233; 242; 245; Vol. 2, p. 15.)

22. The IEP team recorded its manifestation determination on the Manifestation Determination Form. It was explained that Student would receive educational services notwithstanding that it was a weapons offense and regardless of the manifestation determination. (Tr. Vol. 1, pp. 118, 244-245; Vol. 2, pp. 223.)

23. After the manifestation determination was made, the IEP team's discussion turned to the services that Student could receive as a result of the team's decision. During this discussion Student's guardian expressed concerns. Her concerns related to a half-day program rather than a full day. (Tr. Vol. 1, pp. 60-61, 240; Vol. 2, pp. 3, 7, 193.)

24. The manifestation determination turned overwhelmingly on the IEP team's conclusion that Student's disability manifests itself only in disrespectful reactions to requests or reprimands from authority figures. (Tr. Vol. 1, pp. 81, 129, 130, 138, 219-221, 240; Vol. 2, pp. 28-29.)

25. Student's guardian *Parent* testified:

- When asked how the possession of the razor was consistent with Student's past behavior in kindergarten at age 6 yrs. old, *Parent* recounted an incident at a previous school when his kindergarten teacher asked [Student] to do something and "all hell broke loose." (Tr. Vol. 1, pp. 219-221).
- Student's behavior of refusing to take off his hat was consistent with past behavior in that, when Student's mother at a time several years ago when she had custody of Student tells him to do something, Student says, "no." (Tr. Vol. 1, p. 221).

- Student has a problem when someone in authority tells him what to do. (Tr. Vol. 1, p. 221).
- “So someone telling him to do something that authority – he is not going to do it.” (Tr. Vol. 1, p. 221).

26. *Mr. J.K.* testified for the Respondent as an expert witness. *Mr. J.K.* has over thirty years experience working specifically with children who have behavior disabilities. (Tr. Vol. 2, p. 128.) *Mr. J.K.* was formerly the section chief of the behavior support section of the Exceptional Children’s Division of the Department of Public Instruction. (Tr. Vol. 2, pp. 127-128.) A disability label should not determine a link between a disability and conduct, and that each situation must be evaluated on its own facts. (Tr. Vol. 2, pp. 142, 152-153.) *Mr. J.K.* also expressed concern about generalizing “defiant behavior” to determine that all rule violations are a manifestation of a disability and the argument that, because a student has defiant behaviors, the disability is broad enough to encompass any disobedience to rules. (Tr. Vol. 2, p. 160). Irrational behavior is not necessarily a manifestation of a disability that involves defiance. (Tr. Vol. 2, pp. 163-164).

27. *Mr. J.K.* observed Student’s incident that involved the use of an iPod in class (separate from the iPod incident *Dr. L.* experienced on September 7, 2007). (Tr. Vol. 2, p. 132.) During another incident, Student took his shirt off in class and the classroom teacher made Student leave class. (Tr. Vol. 2, p. 132.) *Mr. J.K.* described these behaviors as “defiant.” (Tr. Vol. 2, pp. 132, 134-135.) *Mr. J.K.* believed these behaviors to be consistent with the behaviors experienced in New Jersey set out as defiant and impulsive behavior in Student’s IEP. (Tr. Vol. 2, pp. 132, 134-135.) Petitioner’s witness, *Dr. West*, testified to incidents in New Jersey of Student removing his shirt and refusing to remove his hat. (Tr. Vol. 2, pp. 38-39, 41.) *Mr. J.K.* was not prepared to say that all rule violations were defiant behavior related to Student’s disability and instead, warned against such a finding. (Tr. Vol. 2, p. 160.)

28. *Mr. J.K.* testified that “every case is different and you have to look at what happened before; you have to look at what the child’s adverse impact – his disability had on his decision making capacity and the context in which the behavior arose.” (Tr. Vol. 2, p. 143) According to *Mr. J.K.*, “children with behavior emotional disabilities or emotional disturbances have been subjected to trauma and abuse and tend to have a – sometimes a difficult time with their perception of provocation.” He testified that the stressful situations in which these children have lived can create a sense of paranoia, and that these perceptions of provocation would give such children an incentive to convey less vulnerability than they actually feel. (Tr. Vol. 2, pp. 154-55) He testified that he thinks Student’s move from out of state to North Carolina would trigger stress. (Tr., Vol. 2, pp. 155-156) *Mr. J.K.* testified that Student’s bringing of the razor to school and then having it out in class are examples of defiant behavior. (Tr. Vol. 2, pp. 162-163)

29. *M.L.* is employed by the State of New Jersey as a Family Service Specialist with the Division of Youth and Family Services. He has been employed by the State of New Jersey for more than 15 years and has worked with youth for his entire

career there. Mr. L.'s agency is the legal guardian for Student and for his brother. Mr. L. has been directly involved with Student since August of 2006. At that time Student was placed in an emergency facility in the City of Jersey City. Student was experiencing difficulty with behavior and involvement in the community. (Tr. Vol. 1, pp. 165-168).

30. In March of 2005, Mr. L.'s agency (DYFS) became involved with Student's mother due to her substance abuse and inability to pay rent. In October of 2005, Student was placed with his maternal grandmother who because of Student's behavior was not able to have Student continue in her home. Student was removed to an emergency shelter home with approximately 10 other children and a resident staff in September 2006. Because of Student's unmanageable behavior this facility could no longer manage Student. Student was then placed in a much larger group home in Newark, New Jersey with approximately 100 children. Mr. L. became actively involved with Student at the shelter in Newark. (Tr. Vol. 1, pp. 167-173).

31. Responding to Student's behavior and group home environment, Student's IEP team placed Student in a smaller classroom with individualized school teacher involvement. As a result, Student's behavior became more stable and he became more motivated to attend school. The team discovered that Student had a wide range of academic interests (Tr. Vol. 1, pp. 176-178).

32. Student graduated with his 8<sup>th</sup> grade class which was a major and significant accomplishment for Student given his behavior problems. Student had been main streamed for the later part of his 8<sup>th</sup> grade school year into a regular classroom. (Tr. Vol. 1, pp. 181).

33. Mr. L. characterized Student's taking a razor to school and having it openly visible as consistent with his prior interaction with the Student and based upon what he knew about the Student's history. Mr. L. characterized Student's conduct in this regard as "impulsive behavior" and characteristic of his low self-esteem. (Tr. Vol. 1, pp. 184-186; pp. 210-212).

34. Dr. Kevin Robert West is employed with the Newark Public Schools in Newark, New Jersey as Assistant Superintendent of Special Education and Special Programs for the Newark Public School System. Dr. West holds a Bachelor's Degree in Elementary Education, a Masters in Educational Administration and Supervision and a Doctorate in Educational Leadership. Dr. West, in response to a request of him made by the superintendent of his school system, began mentoring Student in February of 2007. Dr. West did this in lieu of finding a volunteer mentor. Dr. West has experience in mentoring. He began mentoring Student at least once or twice during the week, and Student spent extensive time with Dr. West and his family on each weekend. Dr. West characterized his mentoring relationship with Student "like a father and son type of relationship to the point that I even said to Student that if things did not work out for him down in North Carolina, I would be willing to take him in as a foster child because that was the kind of impact that he made on my life in terms of – he was almost like a son." Dr. West continues speaking with Student at least once or twice a week by telephone in North Carolina. Dr. West would visit with Student in the school system for about 45

minutes to an hour, actually sitting with him in the classroom as a personal aide. Thereafter, he would counsel him at school for approximately 15 minutes. Dr. West took the Student to dinner, to the library, to football games, to basketball games, and to other sporting activities. He would take him to the mall and also take him to church with him on Sundays. The time expended by Dr. West literally amounted to hundreds of hours. (Tr. Vol. 2, pp. 36, 71-75).

35. Dr. West describes Student's disability as Behavioral Disorders with Multiple Disabilities. It causes Student to act irrationally. Dr. West observed Student in the classroom exhibiting these behaviors. He would counsel this Student concerning this behavior and had success in redirecting those behaviors. Dr. West described Student as exhibiting defiant and irrational behavior that he expected would be of the type of behavior that this Student had as a result of his disability. According to Dr. West, Student did not have the ability to immediately grasp and understand the consequences of Student's behavior. These types of behaviors caused Student to not think about consequences at the moment, but Student could be made to understand them through counseling. (Tr. Vol. 2, pp.38-42)

36. The following is quoted from Dr. West's testimony and is found as a fact:

Q. Dr. West, are you aware of the incident occurring here in North Carolina on September 12<sup>th</sup> when Student brought a razor to school, turned it over to the teacher, refused to take his hat off when requested by both the principal and the school resource officer?

A. Yes, I am aware of that only from talking to his case worker and having a conversation – I still keep in touch with Student as often as I can.

Q. Have you had a fairly extended conversation with Student about that incident over the telephone?

A. Yes, I did, yes.

Q. About how long did you talk with Student about that?

A. I stayed on the phone with him for at least an hour.

Q. Now did you do that because I asked you to do that or Ms. Byrd?

A. No, No. Absolutely not. I talked to Student at least twice a week.

Q. Since he's been down here?

A. Since I found out by that situation, I've been calling -- I was talking to him in general and his case worker had told me that he had gotten suspended from school for 360 – some days and I just couldn't believe that could be the case. But anyway, I called Student to get his side of the story and that was why we spoke for so long and I talked to him

about consequences and I talked to him about – I asked him why he brought the razor in and those kind of things.

Q. What is your understanding of Student's conduct that day specifically, bringing a razor in to school and having brought a razor maybe on days preceding that to school, and whether or not that conduct is substantially related his behavioral, emotionally disability?

A. Yes. That would be all part of his disability. We have students in our district that have the same disability and they do the same types of behaviors. They have the same type of behaviors that they will bring in weapons like these and not really understand the consequences of it immediately until someone explains it to them. When I spoke to Student about why he brought that razor in, he was saying that he was using it to clean his fingernails, and I was just basically talking to him about how dangerous that could have been in terms of injuring himself and the germs and diseases that he could have caught from the razor and he basically at that point still did not understand the fact of why we were making such a big deal of it because he wasn't going to use it on anybody and he was just using it to clean his nails and we had a long discussion and I told him about thinking before he acts because students with those disabilities bring in weapons like that because they don't usually think before they act. They will act first and then they'll think later after someone explains it to them that this is not proper.

Q. What about on the facts that on the day that Student was confronted and apparently a very gently, as you described, calming way by his special ed. teacher, the record shows he gently placed the razor in her hand. Does that seem consistent with Student's behavior?

A. Absolutely. Student, from my experience and talking to his social workers and talking to his case workers and talking to his teachers, he would never be a person that would hurt anyone. He has never exhibited that behavior, at least, but yes, that is definitely a part of his normal behavior. If you ask him to give you anything in a particular type of manner, he will do it. If you ask him in a threatening type way, he will definitely be defiant. (Tr. Vol. 2, pp. 42-46)

37. *Parent*, Special Education Director for Respondent, testified that she reviewed the documentation from the manifestation determination review meeting on September 19 and saw that the team had considered the proper information and used the proper standards in making its manifestation determination. (Tr. Vol. 2, p. 244).

Based upon the foregoing Findings of Fact, the undersigned makes the following

## CONCLUSIONS OF LAW

1. Student is a student with disabilities entitled to special education under the Individuals with Disabilities Act (IDEA), 20 U.S.C. §1400 et seq., the federal statute governing the education of students with disabilities. Federal regulations promulgated under the IDEA are codified at 34 C.F.R. Part 300. The controlling state law for the education of students with disabilities is G.S. §115C-106.1 et seq., and the corresponding state regulations are the Procedures Governing Programs and Services for Children with Disabilities.

2. The Office of Administrative Hearings (OAH) has jurisdiction of this contested case pursuant to Chapters 115C and 150B of the North Carolina General Statutes, and the Individuals with Disabilities Education Act.

3. The Petitioners have the burden of proof by the preponderance of the evidence. Schaffer v. Weast, 546 U.S. 49 (2005); G.S. §150B-29(a).

4. A due process hearing in IDEA manifestation determination matters is not the review of an impartial decision below; rather, it is the first impartial evidentiary hearing accorded a parent following informal team meetings. 20 U.S.C. §1415(k)(3)(A), N.C. Gen. Stat. §115C-109.6. The issue to be determined, by the preponderance of the relevant, admissible evidence, is whether the Student's conduct on September 7 and September 12, 2007 was a manifestation of his disabilities.

5. A student with disabilities may be suspended for up to 10 days in a school year without regard to whether the misconduct is a manifestation of his or her disability. 20 U.S.C. §1415(k)(1)(B); 34 C.F.R. §300.530(b). Respondent's short-term suspension of Student for 10 days was legally valid.

6. If a student brings a weapon (including the straight razor at issue in this case) onto school grounds, a school board may remove the student to an interim alternative education setting for up to 45 days, without regard to whether the misconduct was a manifestation of the student's disability. 20 U.S.C. §1415(k)(1)(G); 34 C.F.R. §300.530(g). Respondent's removal of Student to the alternative school for a 45-day period was legally valid.

7. Beyond the 45-day interim alternative educational setting, a school district may not suspend a disabled student for misconduct which is a manifestation of the student's disability. 20 U.S.C. §1415(k)(1)(F); 34 C.F.R. §300.530(f).

8. The decision whether the misconduct was a manifestation of a student's disability is made initially by members of the student's IEP team in a manifestation determination review meeting. 20 U.S.C. §1415(k)(1)(E); 34 C.F.R. §300.530(e).

9. In the 2004 reauthorization of the IDEA, the standard governing the manifestation determination was changed. The 2004 IDEA standard, which is the current standard applicable to this proceeding, is that the conduct must be determined to be a manifestation of the child's disability if either of the following criteria are met:

- i. If the conduct in question was caused by, or had a direct substantial relationship to, the child's disability; or
- ii. If the conduct in question was the direct result of the LEA's failure to implement the IEP.

20 U.S.C. §1415(k)(1)(E); 34 C.F.R. §300.530(e).

10. The 1997 IDEA standard in effect created a presumption that a student's misconduct was a manifestation of his disability, and it was incumbent upon the school district to prove otherwise. The school district was in the position of trying to prove a negative: "Under the 1997 law, schools were forced to prove a negative: that a child's behavior was not a manifestation of his or her disability based upon a complicated set of factors." (Senate Report 108-185 regarding S. 1248, the IDEA reauthorization bill, at p. 64).

11. The 2004 IDEA revised standard expanded the circumstances in which a school district may discipline a special education student in the same manner as a nondisabled child. Under current law, for there to be a manifestation the conduct's relationship to the disability must be direct and substantial, not indirect or attenuated. Also, the school system does not have to prove that the conduct was not a manifestation; rather the parent/student must prove that the behavior was a manifestation.

12. Evidence in the due process proceeding is not necessarily limited to that which was made available at the IEP team meeting. The IDEA, 20 U.S.C. §1415(h), refers to the parties' right to present evidence without specifically limiting that evidence to witnesses or documents presented at the IEP meeting. An IEP team meeting is typically informal, frequently without legal counsel, and without a fully developed record for this court to review. See County School Board of Henrico County v. R.T., 433 F.Supp.2d 657 (E.D.Va. 2006) (hearing officer acted within his discretion in considering post-IEP evidence for a limited purpose).

13. Student was newly enrolled in Respondent's school system, and there was some delay in obtaining records from the previous school in New Jersey, although Respondent made numerous request to obtain school records. Petitioner's witnesses, Mr. L. and Dr. West, had substantial and useful knowledge of the Student, and it would have been impractical for them to come from New Jersey to the IEP meeting.

14. Petitioner has suggested that at the September 19, 2007, IEP meeting, the IEP team did not adequately consider the various documents which were available at the meeting.

15. A razor with a blade of 2-½ inches or more qualifies as a "dangerous weapon" under 18 U.S.C. §930(g)(2). Respondent's school officials acted appropriately in giving serious concern to the presence of a dangerous weapon on school grounds, regardless of whether Student had indicated any intention to use it as a weapon. School

officials' concern is particularly appropriate when a dangerous weapon is possessed by a new student who is not well known to local school officials, is labeled BED, and who overreacts to perceived provocations.

16. Petitioners failed to carry their burden of proof by the preponderance of the evidence that Student's conduct was caused by Student's disability. Petitioners also failed to carry their burden of proof that Student's conduct was the direct result of the LEA to implement the IEP.

17. Petitioners carried their burden of proof by the preponderance of the evidence that Student's conduct had a direct and substantial relationship to Student's disability. This Student's disability was documented as: "Behavioral Disability, Oppositional Defiant Disorder, with Psychological Stressors (moderate) (of) problems with primary support group, Mood Disorder, Conduct Disorder with acute stressors of separation from mother, siblings, family, transition to residential setting, DYFS involvement and lack of social support and moderate stressors of separation from biological father, behavior problems in multiple situations, past criminal situation and placement in special education. Student was classified as BED in North Carolina. Due regard was accorded by the undersigned to the Respondent's IEP determination made under an urgent, stressful and potentially dangerous set of facts involving an article that could be used as a dangerous weapon. This was the dilemma that no LEA wishes to encounter. However, the regard given to Respondent's determination of lack of manifestation was diminished by Respondent's inability at the beginning of the school year to know Student's behavioral and educational history in New Jersey, exacerbated further by *Parent's* failure to secure and provide Student's school and psychological records to Respondent, Respondent's limited experience with Student for less than a few weeks, the urgency to address the conduct, limited knowledge and familiarity with Mr. L. or Dr. West, and the bureaucratic failure of the New Jersey LEA to respond to repeated requests for documentary records. In contrast to Respondent's limited experience with Student was the intimate and comprehensive involvement of New Jersey professionals, M.L. and Dr. Kevin West (particularly, Dr. Kevin West's involvement). A heightened weight was given to the testimony of Dr. West. Dr. West, who is the Assistant Superintendent of Special Education and Special Programs for the Newark, New Jersey School System, in contrast to Respondent, had hundreds and hundreds of hours of direct professional relationship with Student. Those with intimate knowledge of Student's behaviors testified to the direct and substantial relationship between Student's disability and his conduct. This testimony was factual, comprehensive, and compelling. I conclude, based upon this testimony, the other testimonial and documentary evidence in the record supporting this conclusion of manifestation, giving due regard to the Respondent's contrary evidence and conclusions that this Student's conduct concerning the razor was a manifestation of his disability because of the conduct's direct and substantial relationship to the disability. Based upon the preponderance of the evidence, I also reject Respondent's premise that this Student's conduct must be manifested in verbal and nonverbal disrespectful reactions to requests or reprimands for it to be a manifestation of Student's disability in light of the evidence of Student's impulsivity, violation of a known disciplinary rule, his failure to consider consequences, and the factual context of related and similar behaviors.



Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

### **DECISION**

Student's conduct on September 7 and September 12, 2007, including openly bringing a razor to school and displaying it in class, in violation of Respondent's code of student conduct, had a direct and substantial relationship to Student's disability and, thus, the disciplinary procedures applicable to children without disabilities may not be applied to Student as a result of this conduct as manifested.

Student must return to his prior placement from which he was removed, the J.H. Webb School for Health and Life Sciences, upon the condition precedent, that the interim alternative setting of 45 school days has been exhausted.

### **NOTICE**

In order to appeal this final decision, the party seeking review must file a written notice of appeal with the Director of the Exceptional Children's Division, North Carolina Department of Public Instruction. The written notice of appeal must be filed within thirty (30) days after the parties' receipt of notice of the decision. *North Carolina Procedures Governing Programs and Services for Children with Disabilities* §.1512J(2).

This the 29<sup>th</sup> day of November, 2007.

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Julian Mann, III  
Chief Administrative Law Judge

A copy of the foregoing was mailed to:

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This the 29<sup>th</sup> day of November, 2007.

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